



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOS/174032

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 28, 2016, under Wis. Admin. Code, § DHS 2.06, Wis. Admin. Code, § HA 3.03, and/or Wis. Stat. § 48.64(4), to review a decision by the Department of Children & Family Services, Bureau of Milwaukee Child Welfare, in regards to an alleged overpayment of Foster Care, a telephone hearing was held on May 25, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$76.80 in foster payments.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED] [REDACTED] Business Operations Specialist  
c/o Children's Service Society of Wisconsin  
Children's Hospital of Wisconsin Community Services  
620 South 76<sup>th</sup> Street, Suite 120  
Milwaukee, WI 53214

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is the head of a licensed foster home in Wauwatosa, Wisconsin.
2. The petitioner received a foster child, N.H., into his home on November 7, 2014, as an emergency placement, and she continued to reside in his foster home until November 30, 2014, when she was moved to a new residence unrelated to this action.

3. On December 9, 2014, the Department, by its foster placement agent, Children's Service Society of Wisconsin, deposited \$328 into the petitioner's checking account at TCF Bank by direct deposit with the notation "WI DCF WISACWIS WISACWIS".
4. On December 12, 2014, the Department, by its foster placement agent, Children's Service Society of Wisconsin, deposited an additional \$76.80 into the petitioner's checking account at TCF Bank by direct deposit with the notation "WI DCF WISACWIS WISACWIS".
5. On a date unknown subsequent to December 12, 2014, the Department, by its foster placing agent, issued an Invoice Request to the petitioner, asking him to repay \$76.80 for the foster cares provided to N.H., a foster child, between November 7 – 30, 2014.
6. On January 6, 2015, the Department, by the Bureau of Milwaukee Child Welfare, issued a BMCW Overpayment Detail Sheet and an INSTALLMENT AGREEMENT TO REPAY DEBT TO DCF to the petitioner requesting that he repay an overpayment of \$76.80 in installments of at least \$50 per month until it was repaid.
7. On April 28, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals, apparently because he had been informed that a Notice was forthcoming that would inform him of the continuing overpayment claim and his appeal rights.
8. On May 10, 2016, the Department issued a Notice of the overpayment to the petitioner demanding repayment of the \$76.80 overpayment and informing the petitioner for the first time that he could appeal the overpayment determination to the Division of Hearings & Appeals within 30 days of that date, and the address at which to do so.
9. No documentation exists at the agency or in this record that demonstrates that the petitioner made a mileage reimbursement request that gives rise to a payment of \$76.80 from the Department to him as a mileage reimbursement.
10. The \$76.80 overpayment sum is the difference between a foster rate of payment of \$506 per month minus a foster rate of \$410 per month, pro-rata for the 24 days that N.H. was in the petitioner's foster home. The Department asserts that the petitioner was only entitled to the foster payment rate at the \$410 per month rate, and it erroneously paid him at the \$506 rate, pro-rata for 24 days.

### **DISCUSSION**

Wisconsin Statute §48.62(6) allows the Department to recover incorrectly made foster care payments, "by reducing the amount of the foster parent's monthly payment." The Department's foster care rules, Wis. Administrative Code, Ch. DCF 56, provide no further direction on benefit overpayment recovery.

Curiously, a different code chapter provides additional direction – Ch. DHS 2 – "Recoupment of Benefit Overpayments." This may be a relic of the era when the Department of Health and Family Services oversaw foster care; however, this rule has not been repealed or amended to delete its reference to §48.62. Section DHS 2.01 declares that this chapter was promulgated under Wis. Stat. §48.62(6) "to establish procedures for the recovery of incorrectly paid benefits." This code chapter's definition of "benefits" includes payments under Ch. 48 of the statutes, and contains this "incorrect payment" definition:

**(5)** "Incorrectly paid benefits" means benefits paid for an individual not eligible for any benefits during the period for which the payment was made or paid in an amount in excess of the amount that the individual was eligible to receive.

Wis. Admin. Code, § DHS 2.03(5). This rule further states that it applies to overpayments under DHS and DCF until such time as DCF promulgates its own new rule. I can find no evidence that any such new rule has been adopted by DCF, so this rule still applies to DCF overpayments.

In a Fair Hearing concerning an overpayment of foster payments to the head of a foster home, the burden of proof is on the agency to demonstrate by the preponderance of the evidence that the foster parent was overpaid. The foster parent must then produce sufficient evidence to rebut the agency's case.

Here, the foster agency representative asserted that the foster parent was overpaid \$76.80 in one partial month (November 7 - 30, 2014) of foster payments because his foster rate was too high for that month, apparently due to an agency error. [REDACTED] testified that the child was placed with the petitioner from November 7 - 30, 2014; that the agency paid him \$506 for this period, and later discovered its error. She asserted that he should have been paid only \$410. No rate documents or computations demonstrating how any of these three amounts were established, i.e., the original, corrected, or overpayment amounts, for this 24 day period, were provided by the agency. Rather, the agency provided only an invoice for \$76.80, which notes that \$63.48 of the \$76.80 was considered "revenue" and \$13.32 was considered an "expenditure". Neither [REDACTED] nor her supervisor, Sandy Lumley, could explain the invoice or how the overpayment was computed in any way.

I reviewed the rates and the math, and I would note that  $\$506 - \$410$  is  $\$96$ .  $\$96 \div 30 \text{ days} = \$3.20$  per diem.  $\$3.20 \times 24 \text{ days} = \$76.80$  (This overpayment sum would then appear to represent the pro-rata portion of the rate differential for 24 days of care from November 7 - 30, including November 7<sup>th</sup>.)

The petitioner never contested the rate at which he was paid for the child in foster care. Rather, he testified, as he alleged in his pleading, that the then-assigned foster care licensing specialist, [REDACTED], and the then-assigned casemanager, [REDACTED], approved the \$76.80 as a one-time additional payment because the foster child placed with him was so place on an emergency basis, stayed in his foster home short term, and needed to be driven to a school 7 miles away everyday because the child had siblings attending that school too, and that this was in the best interests of the child. The additional payment was, he testified, premised upon a mileage reimbursement sheet that he submitted detailing the additional expenses. He then produced his bank records showing two deposits from the agency. See, Finding of Fact Nos. 3 & 4, above.

The agency representative, [REDACTED] replied to the effect that neither of these foster workers were available for the hearing, [REDACTED] had left the agency, and there was no record of any such expense claim or documentation. Rather, it appeared to her that the petitioner had erroneously been paid for foster care for this foster child for the period of November 7 - 30, 2014.

In reply, the petitioner testified that he did not keep a copy of the mileage logs, and could not produce one.

The preponderance of the evidence presented leads me to conclude that it is more likely than not that the \$76.80 differential sought as an overpayment recovery is derived from the monthly rate change from \$506 to \$410 per month, pro-rata for 24 days of care, *not* as a sum reimbursing the petitioner for mileage. Frankly, the petitioner must be mistaken in that regard. *The probability that the math in analyzing the pro-rated foster rate as initially paid, and subsequently reduced, equals exactly \$76.80 is a mere coincidence* does not strike me as very likely at all.

There is absolutely no evidence beyond the petitioner's mere assertion, that he produced a mileage report that substantiates that the \$76.80 is for mileage. He produced no proof of the mileage, the rate claimed, the dates, or the form.

It is unfortunate that this apparently otherwise earnest foster parent, who took a child in to his home on an emergency basis, is being dunned for this small sum. And that it has been pursued for nearly 18 months. I urge both parties to put this incident behind them and return to their mutually important work of caring

for foster children. But be that as it may be, it does appear to be an overpayment, and the State demands agencies recover funds erroneously paid where possible.

Under these facts, the overpayment determination must be sustained. I conclude that the petitioner was supplemented on December 12, 2014, at the wrong and higher foster rate, in error, and that he was not entitled to that \$76.80 and must pay it back.

### **CONCLUSIONS OF LAW**

That the Department, by its agents, has correctly determined that the petitioner was overpaid \$76.80 in foster payments for the period of November 7 – 24, 2014.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of June, 2016

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 10, 2016.

Foster Care